

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)) More Enterprises Communications Network, Inc.)) San Diego, California)	File Number: EB-05-SD-011 NAL/Acct. No.: 200532940008 FRN: 0010901734
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FORFEITURE ORDER

Adopted: August 23, 2006

Released: August 25, 2006

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to More Enterprises Communications Network, Inc. (“More Enterprises”) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ On September 28, 2005, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 to More Enterprises after determining that More Enterprises apparently willfully and repeatedly operated an unlicensed microwave radio station on microwave channels 21675.0 MHz and 22471.75 MHz² in San Diego, California. In this *Order*, we consider More Enterprises’ argument that Commission staff had assured “similarly situated” microwave operators, and More Enterprises, by association, that the Commission would not take enforcement action against them.

II. BACKGROUND

2. On December 14, 2004, an agent from the Commission’s San Diego Office was investigating allegations that companies in the San Ysidro area of San Diego were using unauthorized microwave radio stations to communicate with sister companies across the U.S. – Mexico border in Tijuana, Mexico. The agent monitored and measured the transmissions of a microwave radio station operated by More Enterprises, at an unattended transmitter site at 4630 Border Village Road, San Diego, California. The frequency measurement showed that this microwave radio station was operating on microwave channel 21675.0 MHz.

3. A review of the Commission’s database revealed that More Enterprises had no authorization to operate a point-to-point microwave radio station. However, a pending application, filed by More Enterprises on September 2, 2004, for frequency 22471.75 MHz at the 4630 Border Village Road location was found.³

4. On January 25, 2005, the San Diego agent returned to the More Enterprises site and again measured the microwave radio station operating on microwave channel 21675.0 MHz. At this time the agent conducted an inspection of the radio station with the building management. The information

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 101.147(s).

³ See File No. 0001861022.

provided by the building management and others confirmed that this transmitter was operated by More Enterprises.

5. On March 11, 2005, the San Diego Office sent a Letter of Inquiry (“LOI”) to More Enterprises concerning its operation on an unauthorized frequency of 21675.0 MHz, in violation of Section 301 of the Act. On March 23, 2005, an agent of the Commission’s San Diego Office returned to the More Enterprises site at 4630 Border Village Road and found that the station was operating on microwave channel 22471.75 MHz. The San Diego Office received a reply to the LOI on April 8, 2005. In its reply, More Enterprises acknowledged that it began operating this microwave radio station in 2004 on 21675.0 MHz and that it had a license application pending with the Commission. More Enterprises also stated that the equipment as installed had the receiver and transmitter frequencies inadvertently switched as the station should operate on 22471.75 MHz.

6. A further review of the Commission’s database revealed that on August 17, 2005, the pending More Enterprises application for a Private Operational Fixed Point-to-Point Microwave radio station on 22471.75 MHz, located at 4630 Border Village Road, San Diego, California, was granted under call sign WQDG363.

7. On September 28, 2005, the San Diego Office issued a *NAL* in the amount of \$10,000 to More Enterprises.⁴ In the *NAL*, the San Diego Office found that More Enterprises apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed microwave radio station on microwave channels 21675.0 MHz and 22471.75 MHz⁵ in San Diego, California. More Enterprises filed a response to the *NAL* on October 28, 2005 (“*Response*”). In this *Response*, More Enterprises argues that “similarly situated” microwave operators had been assured by staff from the Commission’s International Bureau, in 2001, that the International Bureau would no longer grant special temporary authority to cross border microwave operators, such as More Enterprises, but that no enforcement action would be taken against these operators either. More Enterprises argues that its operations in 2004 and 2005, which are the basis of the San Diego Office’s *NAL*, were done in reliance on this advice and therefore the proposed forfeiture should be cancelled. More Enterprises attaches affidavits from its counsel and consulting engineer detailing what they were told by International Bureau staff in 2001.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹

9. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532940008 (Enf. Bur., Western Region, San Diego Office, released September 28, 2005).

⁵ 47 C.F.R. § 101.147(s).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(D).

in accordance with the Act and with a license.¹⁰ On December 14, 2004, January 25, 2005, and March 23, 2005, measurements made by San Diego agents revealed that More Enterprises was operating a microwave radio station on microwave channels 21675.0 MHz and 22471.75 MHz. A review of Commission records indicated that More Enterprises had no authorization to operate on 21675.0 MHz. The review also indicated that More Enterprises had a pending application, but no authorization, to operate on 22471.75 MHz until the license was granted on August 17, 2005. On April 8, 2005, More Enterprises acknowledged operating a microwave station on the frequencies of 21675.0 MHz and 22471.75 MHz since 2004. More Enterprises also acknowledged that it had no authorization, only a pending application, to operate such a station.¹¹

10. In its *Response*, More Enterprises does not claim that it held a valid authorization to operate its microwave station during the 2004 and 2005 time period detailed in the *NAL*. Indeed, More Enterprises does not deny operating repeatedly without a license. More Enterprises also does not discuss its September 2, 2004 application. Instead, More Enterprises argues that it should not be liable for a forfeiture because it was relying on oral advice given to its counsel by Commission staff in 2001, concerning other similarly situated microwave operators.

11. The Commission has consistently held that applicants are responsible for compliance with the Commission's Rules and that they should not rely on informal oral opinions from Commission staff.¹² However, assuming *arguendo* that Commission staff did advise More Enterprises' counsel that there would be no further enforcement actions initiated by field offices regarding unlicensed cross-border 23 GHz systems in 2001, we agree with the San Diego Office's determination that More Enterprises' reliance on this advice in 2004 and 2005 was misplaced. More Enterprises argues that in 2001, and "[u]ntil 2005, the FCC's microwave licensing branch had steadfastly refused to grant applications seeking cross-border 23 GHz links because the licensing authority in Mexico was not then issuing authorizations for parallel links from Mexico to the U.S." A review of the Commission's database shows that More Enterprises is mistaken. By January 2004, cross-border coordination and licensing by both the FCC and the Mexican Ministry of Communications and Transport ("SCT") was routinely occurring. Indeed, when More Enterprises first filed an application for authority to operate on September 2, 2004, cross-border microwave licensing by the FCC was occurring. Therefore, More Enterprises clearly understood that licensing was required for its cross-border operations in 2004 and 2005, the period during which the San Diego Office agents observed and questioned More Enterprises' unauthorized operations. Consequently, we find no merit to More Enterprises' argument.

12. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that More Enterprises willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted.

¹⁰ 47 U.S.C. § 301.

¹¹ Pursuant to Sections 101.31(b)(1) and 101.31 (b)(1)(v) of the Rules, 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v), certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications. The frequency proposed for use by More Enterprises in its application is not contained in these frequency bands. Also, More Enterprises' proposed station is located approximately 0.64 km from the Mexican border.

¹² *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990) *aff'd sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, More Enterprises Communications Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Section 301 of the Act.¹³

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to More Enterprises Communications Network, Inc., at its address of record, and its counsel of record, Frederick J. Day, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹³ 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.